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Supreme Court, U.S.
FILED
JUN 5 - 2008
OFFICE OF THE CLERK

No. 08-144

In The

Supreme Court of the United States

JOHN H. WEBSTER,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

On Petition For Writ Of Certiorari
To The US Court of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

John H. Webster
Pro se
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Questions Presented for Review

1. Is the social/legal obligation on each individual to pay Income Taxes tied to the obligation of the US Government to protect the Civil Rights of that individual?

2. When a citizen petitions the US Government for Redress of Grievances does he/she have the right to withhold payment of income taxes until those grievances are satisfactorily addressed?

3. Is the intent of the First Amendment's statement on the "Right of the people... to petition the Government for a redress of grievances" violated when the US Tax Court does not have jurisdiction to hear and rule on evidence of the violations, by Federal Agencies, of the Civil Rights of US citizens.

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1 - The text of these Constitutional Amendments is listed in the fifth item of the Appendix. See page 22.

2 . Evidence letter to the FBI and their response showing their unwillingness to investigate Petitioner's allegations. These documents are not included with this petition but are available to the Court.

Jurisdiction on Writ of Certiorari

On March 07, 2008 the United States Court of Appeals for the Ninth Circuit (case # 06-74611), with Beezer, Fernandez and McKeown circuit Judges presiding, entered their decision affirming the US Tax Court's decision on tax case # 24277-04 (John H. Webster v. Commissioner of Internal Revenue) finding for the Commissioner.

In that ruling the United States court of appeals, Ninth Circuit has decided an important question of federal law that has not been, but should be, settled by the United States Supreme Court.

That question is whether or not a Tax Court without jurisdiction to investigate claims related to the violation by Federal Agencies of the Civil Rights of a US citizen, meets constitutional requirements set forth in the First, Tenth, and Thirteenth Amendments to the US Constitution

Statement of Case

- In March of 1990, Petitioner was arrested as a result of a sting carried out by a task force composed of agents of the U.S. Postal Inspection Service and police officers of the San Jose Police Department. Petitioner was charged with Attempted Child Pandering because of statements that he allegedly made during recorded phone calls with an undercover policewoman. He was represented in court by a Public Defender. After 6 months in county jail awaiting trial, Petitioner, following the advice of his Public Defender, accepted a Nolo Contendre ("No Contest") Plea Bargain and was released in November of 1990 with a felony conviction.

- Once Petitioner was released from county jail he hired a private attorney and slowly put together the real facts of the case. The sting he had fallen into was an Organized Criminal Conspiracy that he believes was directed by the USPIS. Petitioner knows and is willing to prove in a court of law that in his case split entrapment was used; that tape evidence was extensively altered; that evidence letters were destroyed; that a bogus justification was used to get the search warrant on his place, but then sealed forever from public view by a cooperating judge to hide its bogus nature.

Petitioner also believes that his Public Defender was

taking part in that criminal conspiracy by misrepresenting Petitioner's case to him to get him to accept that Plea Bargain. All of the crimes committed by the Police and Federal Agents were then hidden behind that Plea Bargain.

- In 1998 Petitioner gave up on his normal State legal challenges that were attempts to reopen his criminal case. He switched to using his Free Speech Rights (circulating fliers and creating a web-site: www. JWebster.com), and stopped paying State or Federal Income Taxes since it was obvious to him that neither government actually cared about protecting his Rights.

- Finally in July of 2001 Petitioner sent out a formal Petition for Redress of Grievances to many government officials including the US President, the IRS Commissioner, and Congressional representatives. He received no responses from that petition.

- In 2001 Petitioner filed a Short form Tax case (#7243-01S)[3] and in that case he subpoenaed [4] a San Jose Police lieutenant (a hostile witness) that had been involved in altering evidence during that 1990 sting. Petitioner was confident that with her under oath he could get her to admit to the alteration of evidence in

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3 - In the 9th Circuit Court of Appeals case # 06-74611, Respondent first made reference to this prior tax case of Petitioner's as did the Tax Court and Appellate Court itself. See Appendix page 16 & 20.

4 - See Appendix page 23.

that case, and to witness to the role that Federal Agents had taken in that illegal sting. But instead the City Attorney for San Jose filed a motion and succeeded in having that subpoena quashed [5] because the judge accepted as fact that "Whether or not [Petitioner's] Rights were violated [by Federal Agents] is not relevant to his tax liability".

- In 2005 Petitioner filed another tax case (docket # 24277-04) but this time with the intent to appeal the expected Court decision. The main argument brought up at that case's hearing, on November 28, 2005 with Judge Juan F. Vasquez presiding, was that since Petitioner's Rights were violated by one Federal Agency, and another — the FBI — refused to even investigate those allegations [6], that the US Government had given up its right to impose an Income Tax on Petitioner.

  Any such tax imposed on Petitioner would be a violation of the 13th Amendment to the US Constitution, to wit a form of "Involuntary Servitude" with no substantial service or value returned. In July of 2006 that Tax Court ruled as expected, finding for the IRS Commissioner.

- On September 18th of 2006 Petitioner filed a notice of appeal with the US Court of Appeals, Ninth Circuit

5 - See T.C. Order for case 7243-01S in Appendix page 24.

6 - T.C. Evidence submitted by Petitioner, is a letter to the FBI and their response where they deny jurisdiction to even investigate Petitioner's allegations.

and submitted an informal Opening Brief in January of 2007 (Case No. 06-74611). The argument raised was similar to that raised in the US Tax Court: that because Federal Law Enforcement Agencies had violated Petitioner's Civil Rights and because no Federal agency was even interested in investigating Petitioner's allegations, he was being denied the one service that the US Government claimed to provide to US Citizens that was well worth paying substantial portions of one's income for. That service is of course the protection of one's Civil and Property Rights. Therefore to Petitioner the Income Tax became an involuntary servitude; an extortion payment with nothing substantial in return.

On March 7th of 2008, the Ninth Circuit Court of Appeals reached its decision affirming the Tax Court findings (see appendix, page 19-20).

- In the written decision the Circuit Judges stated that:

  "Contrary to Webster's contention, the tax court lacks jurisdiction to investigate unrelated claims"

and continued saying:

"This court [i.e. the Ninth Circuit Court of Appeals] therefore also lacks [that] jurisdiction"

ARGUMENTS ON QUESTIONS [7]

1. Contrary to what this Government and even this Court may believe the "Laws" are not the ultimate determining factor for what is right or wrong – they are not even close. A far more important criterion is "Who is the rightful owner [of whatever is being talked about]" and are that owner's Rights being respected or are they being violated.

   So for example if a thief takes property or money from its rightful owner Common Law [8] dictates that reasonable force can be used to take back those items. This is true regardless of whether the thief is a hoodlum on the street or a representative government with a Congress that passed a "law" giving itself the "Right" to steal and with a Police force to enforce that "law".

   The only exception is if the property taken is fully compensated for and/or the money taken is to compensate for past damages caused by the owner, or to pay for past or future services that the owner has used or requires. Since the Framers of the U.S. Constitution never intended that the U.S. Government be tyrannical or evil, the intent must have been for this exception to always apply.

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7 - For the text of each Question refer to page i.

8 - Common Law is one of those Powers/Rights that are reserved to the People in the 10th Amendment to the US Constitution. It is also referenced in the 7th Amendment.

What this means is that even though the US Tax Code may not acknowledge it, the Income Tax and the benefits that come from the US Government, the primary benefit being the protection of our Civil and Property Rights, are simply two sides to the same coin. So the answer to the first question presented for review by this Court must be: Absolutely!

2. Again under Common Law, when a Provider of Services has not lived up to its side of a contract, has not provided the guarantied services, it is quite normal to withhold funds to that Provider till those services are provided, or at least settled in arbitration. The only question then would be whether the "Petition for Redress of Grievances" sent to the Government included accusations of services guarantied but not provided or of Civil or Criminal conduct by the Government/Provider that resulted in damages that need reparation. If either of these conditions exist than the answer to the second question is again: Absolutely!

3. With the process by which the U.S. Government accepts a "Petition for Redress of Grievances" being either totally broken or even non-existent, and since by Common Law withholding money until a resolution is reached is the normal accepted way of dealing with a dispute with a provider, then refusing to pay taxes and

dealing with the Internal Revenue Service in the US Tax Court becomes the de-facto method of petitioning Government for redress.

The current setup with the IRS and US Tax Court apparently was intentionally formulated to isolate the citizen's tax liability from the Government's performance so that it could not be easily held accountable. Even so the arguments for Questions 1 and 2 above show that a citizen's tax liability really should be eliminated, reduced or at least postponed whenever there is proof that the Government and its agents failed to protect or even were involved in violating that person's Civil Rights.

Therefore it is an outright failure of the "Due Process" to not allow the kind of evidence to be submitted in the US Tax Court that might lead to such a proof. This restriction on what otherwise has become the only viable method of petitioning Government for Redress of Grievances is clearly a violation of the intent (that citizens can petition Government with their complaints and actually be heard), if not the letter, of the First Amendment of the Constitution. So the answer to the third question is: Yes.

CONCLUSION

Petitioner's intent in this tax case and appeal has never been to avoid paying taxes. It has always been to force a redress for the criminal activity committed by local and Federal Law Enforcement Agencies against him.

Petitioner has tried to convince the US Tax Court Judges that criminal acts by Government Agents really do effect whether we owe the Government taxes and how much. Petitioner believes that this concept is basic and intuitive and that he should be able to submit evidence of this type.

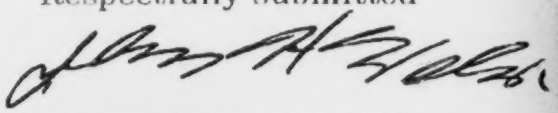
It is therefore respectfully submitted that the US Supreme Court should order the following:

- That the tax code be revised/corrected so that evidence of Government's failure to protect Civil and Property rights, be admissible in the US Tax Court.

- That Petitioner's case be sent back to the US Tax Court with instructions to rehear his case allowing him to subpoena witnesses to show if Federal Agents really did violate his rights.

Dated: June 5, 2008

Respectfully submitted



John H Webster
Petitioner, pro se

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T.C. Memo. 2006-144

UNITED STATES TAX COURT

JOHN H. WEBSTER, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 24277-04. Filed July 6, 2006

John H. Webster, pro se.

Huong T. Duong, for respondent.

MEMORANDUM OPINION

VASQUEZ, Judge: This case is before the Court on respondent's motion for summary judgment and to impose a penalty under section 6673.[1]

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[1] Unless otherwise indicated, all section references are to the Internal Revenue Code in effect for the year in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

Respondent determined a deficiency of $22,285 in petitioner's 1998 Federal income tax, a section 6651(a)(1) addition to tax of $10,585.38, and a section 6654(a) addition to tax of $1,011.45. In his answer, respondent adjusted the amount of the section 6651(a)(1) addition to tax to $5,571.25.[2]

The issues for decision are: (1) Whether petitioner is liable for the deficiency determined by respondent; (2) whether petitioner is liable for the failure to file addition to tax under section 6651(a)(1); (3) whether petitioner is liable for the failure to pay estimated tax addition to tax under section 6654(a); and (4) whether petitioner is liable for the penalty pursuant to section 6673.

Background

Some of the facts have been stipulated and are so found. The stipulation of facts and the attached exhibits are incorporated herein by this reference. At the time he filed the petition, petitioner resided in Santa Clara, California.

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2 - Respondent attached a Form 4549, Income Tax Examination Changes, to the notice of deficiency. In the Form 4549, respondent asserted a sec. 6651(a)(1) addition to tax of $5,014.13 and a sec. 6651(a)(2) addition to tax of $5,571.25. These additions to tax were consolidated on the first page of the notice of deficiency where respondent asserted a sec. 6651(a)(1) addition to tax in the amount of $10,585.38. In his answer, respondent concedes the sec. 6651(a)(2) addition to tax asserted in Form 4549, and as a result, increased the sec. 6651(a)(1) addition to tax initially asserted in Form 4549 to the maximum amount of 25 percent of the amount required to be shown as tax on the return.

In 1998, petitioner received $68,532 from Focaltron Corporation as nonemployee compensation and $32 from Wells Fargo Bank as interest income.

Petitioner admits that he did not file a Federal Income tax return for tax year 1998 and did not make any payments for tax year 1998.

Discussion

I. Motion for Summary Judgment

Rule 121(a) provides that either party may move for summary judgment upon all or any part of the legal issues in controversy. Summary judgment may be granted if it is demonstrated that no genuine issue exists as to any material fact and a decision may be rendered as a matter of law. Rule 121(b); Sundstrand Corp. v. Commissioner, 98 T.C. 518, 520 (1992), affd. 17 F.3d 965 (7th Cir. 1994). As the party who moved for summary judgment, respondent has the burden of showing there is no genuine issue as to any material fact and that he is entitled to judgment as a matter of law. Nis Family Trust v. Commissioner, 115 T.C. 523, 536, 537-538 (2000).

We conclude that there is no genuine issue as to any material fact and that a decision my be rendered as a matter of law.

II. The Deficiency

Section 61 defines gross income as all income from whatever source derived. Gross income includes, among other things compensation for services and interest. Sec. 61(a).

Petitioner admits that he received the income listed in the notice of deficiency. However, petitioner contends, inter alia, that:

> All Fedral [sic] income taxes levyed [sic] against me from 1998 to the present should be voided since during this time I have not been a tax filer or tax payer [sic] as defined in the US Tax Code, nor has any of the moneys I received resulted from interstate commerence [sic] or otherwise met the definition of "Taxable Gross Income" per that Tax Code. To make sure that I have not missed anything I have specifically requested that the IRS notify me of any law or code that actually requires me to file or pay Federal Income Tax. They have not notified me of any such law or code.
>
> In addition the Federal Government has in general exempted me from any so called "Social Contract" to pay taxes by an Agency of that Government having violated my rights and thereby that Government has failed to uphold its part of that "Social Contract".

Petitioner advanced these and other arguments in filings and at the summary judgment hearing. These arguments are characteristic of tax-protester rhetoric that has been

universally rejected by this and other courts. Wilcox v. Commissioner, 848 F.2d 1007 (9th Cir. 1988), affg. T.C. Memo. 1987-225; Carter v. Commissioner, 784 F.2d 1006, 1009 (9th Cir. 1986). We shall not painstakingly address petitioner's assertions "with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984).

Accordingly, we conclude that petitioner is liable for the deficiency determined by respondent.

III. Additions to Tax and Penalty

A. Section 6651(a)(1)

Respondent determined that petitioner is liable for the addition to tax pursuant to section 6651(a)(1). Section 6651(a)(1) imposed an addition to tax for failure to file a return on the date prescribed (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect. See Higbee v. Commissioner, 116 T.C. 438, 446-447 (2001). Petitioner conceded that he did not file a return for 1998, and there is no showing that his failure to file was due to reasonable cause and not due to willful neglect. Accordingly, we hold that petitioner is liable for the addition to tax under section 6651(a)(1).

B. Section 6654(a)

Section 6654 imposes an addition to tax for failure to pay estimated income tax. The section 6654 addition to tax is mandatory unless the taxpayer comes within one of the limited statutory exceptions. Spurlock v. Commissioner, T.C. Memo. 2003-248.

Form 4340, Certificate of Assessments, Payments, and Other Specified Matters; Form 1099-MISC; and the stipulation of facts establish that petitioner failed to pay any estimated tax for 1998.

Petitioner does not qualify for any of the exceptions listed in section 6654(e). Accordingly, we hold that petitioner is liable for the addition to tax pursuant to section 6654(a).

C. Section 6673

Under section 6673, this Court may require a taxpayer to pay a penalty not to exceed $25,000 if the taxpayer takes a frivolous position in the proceeding or institutes the proceeding primarily for delay. A position maintained by the taxpayer is "frivolous" where it is "contrary to established law and unsupported by a reasoned, colorable argument for change in the law." Coleman v. Commissioner, 791 F.2d 68, 71 (7th Cir. 1986).

Petitioner's protester rhetoric is manifestly frivolous and groundless. He has wasted the time and resources of this Court on more that one occasion,[3] Petitioner's insistence on making protester type arguments after he was warned both in the current proceedings and in prior proceedings before this

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[3] Petitioner was before this Court regarding his 1997 tax year, advancing similar protester arguments. Webster v. Commissioner, T.C. Summary Opinion 2002-43. We sustained respondent's determination and warned petitioner that the imposition of a sec. 6673 penalty was likely of petitioner returned to this Court advancing similar arguments. Id.

Court indicates an unwillingness on the part of petitioner to respect the tax laws of the United States. Petitioner has had a fair warning that penalties would be imposed if he continued to make frivolous arguments. Accordingly, we shall impose a penalty on petitioner pursuant to section 6673 in the amount of $2,500.

To the extent not herein discussed, we have considered the parties' other arguments and found them to be irrelevant or meritless.

To reflect the forgoing,

An appropriate order and decision will be entered.

UNITED STATES TAX COURT

Washington, D.C. 20217

JOHN H. WEBSTER, Petitioner,	)	
v.	)	Docket No. 24277-04
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	

ORDER AND DECISION

On September 15, 2005, respondent filed a motion for summary judgment and to impose a penalty under I.R.C. section 6673. Pursuant to the determination of the Court, as set forth in its Opinion filed July 6, 2006, it is

ORDERED that respondent's motion for summary judgment and to impose a penalty under I.R.C. section 6673 is granted. It is further

ORDERED and DECIDED that there is a deficiency in income tax due from petitioner in the amount of $22,285 for the taxable year 1998;

That there is an addition to tax due from petitioner under I.R.C. section 6651(a) in the amount $5,571.25 for the taxable year 1998;

That there is an addition to tax due from petitioner under I.R.C section 6654(a) in the amount of $1,011.45 for the taxable year 1998; and

That there are damages due from petitioner, which are hereby awarded to the United States, in the amount of $2,500 pursuant to I.R.C. section 6673.

(Signed) Juan F. Vasquez

Entered: **JUL 6 2006** Juan F. Vasquez, Judge

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
MAR 07 2008

JOHN H. WEBSTER,
Petitioner - Appellant,
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent - Appellee.

No. 06-74611
Tax Ct. No. 24277-04
MEMORANDUM*

Appeal from a Decision of the
United States Tax Court

Submitted February 26, 2008**

Before: BEEZER, FERNANDEZ and McKEOWN, Circuit Judges.

John H. Webster appeals pro se from the tax court's order granting summary judgment for the Commissioner and imposing a penalty against Webster under 26 U.S.C. § 6673. We have jurisdiction under 26 U.S.C. § 7482(a)(1). We review de novo the tax court's summary judgment.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Miller v. Comm'r, 310 F.3d 640, 642 (9th Cir. 2002). We review for abuse of discretion the tax court's position of a section 6673 penalty. *Grimes v. Comm'r*, 806 F.2d 1451, 1454 (9th Cir. 1986) per curiam). We affirm.

Webster contends that no law requires him to pay taxes, and that, given the government's actions in an unrelated felony case against him, the Thirteenth Amendment prohibits collection of taxes from him. We reject these arguments as frivolous. *See e.g., Wilcox v. Comm'r*, 848 F.2d 1007, 1008 (9th Cir. 1986). Contrary to Webster's contention, the tax court lacks jurisdiction to investigate unrelated claims. *See Comm'r v. McCoy*, 484 U.S. 3, 7 (1987). This court therefore also lacks jurisdiction. *See id.* At 7. The tax court properly upheld the Commissioner's tax determination.

The tax court also acted well within its discretion when imposing a penalty against Webster for taking a frivolous position. In a previous case, the tax court had warned Webster that section 6673 penalties would be imposed "if he returns to this Court with similar arguments in the future." *Webster v. Comm'r*, T.C. Summary Opinion 2002-43 (April 24, 2002).

Webster's remaining contentions are unpersuasive.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT **FILED**
APR 29 2008

JOHN H. WEBSTER
Petitioner - Appellant

v.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent - Appellee

No. 06-74611
Tax Court No. 24277-04

MANDATE

The judgment of this Court, entered 03/07/2008, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

Molly C. Dwyer
Clerk of Court
S/
By: Theresa Benitez
Deputy Clerk

TEXT OF CONSTITUTIONAL PROVISIONS

Amendments to US Constitution:

1st Amendment: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceable to assemble, and to petition the Government for a redress of grievances.

7th Amendment: In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

10th Amendment: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

13th Amendment:

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

United States Tax Court
WASHINGTON, D.C. 20217

JOHN HARVEY WEBSTER
Petitioner,

v.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

Docket No. 7243-01S

SUBPOENA

To OFFICER BRENDA HERBERT of the San Jose Police Department YOU ARE HEREBY COMMANDED to appear before the United States Tax Court at 10 AM on the fourth day of February, the year 2002 at Federal Building & US Courthouse, 450 Golden Gate Ave., San Francisco California, room 2-1408 then and there to testify on behalf of John Harvey Webster in the above-entitled case, and to bring with you documents and personal notes concerning your interactions with John Webster since January 1990; documents concerning your involvement with the SCC case # 139218, and your interactions with Federal Law Enforcement Agencies that related to John Webster or to the sting/investigation that resulted in that case against John Webster. and not to depart without leave of the Court.

SEAL OF UNITED STATES TAX COURT

Date January 8th, 2002

S/ Charles S. Casazza
Charles S. Casazza, Clerk

UNITED STATES TAX COURT
WASHINGTON, DC 20217

JOHN H. WEBSTER, Petitioner	)	
v.	)	Docket No. 7243-01S
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	

ORDER

This case was recalled from the calendar for the Trial Session of the Court at San Francisco, California on February 4, 2002 for hearing on the motion to quash subpoena and for a protective order, filed on January 25, 2002 by Malgorzata Laskowska on behalf of the City of San Jose and Lt. Brenda Herbert. The parties and movant appeared and argument was heard on the motion. After due consideration, and for cause more fully appearing in the transcript of the proceeding, it is

ORDERED that the motion by Malgorzata Laskowska on behalf of the City of San Jose and Lt. Brenda Herbert to quash subpoena and for protective order, filed January 25, 2002, is granted in that the subpoena served upon Lt. Brenda Herbert, a copy of which is attached as Exhibit A to the motion to quash, is hereby quashed. It is further

ORDERED that the Clerk of the Court, in addition

to his regular service upon the parties, is directed to serve a copy of this order upon Malgorzata Laskowska, Deputy City Attorney, Office of the City attorney, 151 West Mission Street, San Jose, California 95110.

(Signed) NORMAN H. WOLFE
Norman H. Wolfe
Special Trial Judge

Dated: San Francisco, California
February 4, 2002